



**Australian
Competition &
Consumer
Commission**

Determination

Application for Minor Variation of Authorisations

Australian Payments Clearing Association Limited

In relation to the Regulations and Procedures for the
Consumer Electronic Clearing System

Date: 8 May 2002

Authorisation no:

A30176, A30177
A90620

File no:

A96/17, CA96/18,
CA97/12, C2000/1140

Commissioners:

Fels, Jones
Martin, Bhojani,

1. The Application

- 1.1 On 11 February 2002 the Australian Payments Clearing Association (APCA) lodged an application under section 91A of the *Trade Practices Act 1974* (the Act) for minor variations to authorisations A30176, A30177 and A90620 granted to APCA in respect of the Regulations and Procedures for the Consumer Electronic Clearing System (CECS).
- 1.2 Authorisations A30176 and A30177 relate to the making and giving effect to provisions of arrangements that might be exclusionary provisions or that may substantially lessen competition, within the meaning of section 45 of the Act. Authorisation A90620 relates to conduct that may constitute the practice of exclusive dealing under section 47 of the Act.
- 1.3 The application for minor variation includes proposed amendments to the CECS Manual (procedures governing the operation of CECS) that relate to:
- the physical characteristics of debit cards;
 - the embossing of information on debit cards;
 - the encoding on the magnetic stripe of debit cards; and
 - PIN security.
- 1.4 The primary purpose of the proposed amendments to the CECS Manual is to set minimum standards in relation to the embossing and encoding of debit cards, which must be met by all CECS Members participating in ATM and EFTPOS transactions and related interchange in their capacity as issuers. At present there are no such standards in the CECS Manual.

2. Statutory provisions

- 2.1 Section 91A of the Act provides that on receipt of an application for a minor variation of an authorisation the Commission must, if it is satisfied that the variation sought is a minor variation, invite submissions from interested parties.
- 2.2 A minor variation in relation to an authorisation is defined (section 87D) as a single variation that does not involve a material change in the effect of the authorisation. A person may apply for two or more minor variations at the same time, and the Commission may deal with all the variations together; if it is satisfied that the combined effect of those variations, if all were granted, would not involve a material change in the effect of the authorisation.
- 2.3 After consideration of the application and any submissions received, the Commission may make a determination varying the authorisation or dismissing

the application. The tests for varying an authorisation are in sub-sections 91A(4) and (5) of the Act.

- 2.4 In respect of arrangements and conduct that may substantially lessen competition, the Commission must be satisfied that the variation would not result, or would be likely not to result, in a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation.
- 2.5 In respect of exclusionary provisions and third line forcing exclusive dealing conduct, the Commission must be satisfied that the variation would not result, or would be likely not to result, in a reduction in the benefit to the public that arose from the original authorisation.

3. Submissions

APCA's submission

- 3.1 APCA considers that issuer standards are important for efficiency and security reasons. APCA stated these standards will also ensure that a degree of commonality in relation to the physical attributes of cards used throughout the industry (the main benefits being efficiency and wide acceptability without incompatibility problems between cards and various kinds of ATM's and EFTPOS devices). APCA stated that to a large extent such commonality already exists because of market forces so most of the changes represent a codification of the existing situation.
- 3.2 APCA stated that the standards are designed to ensure card issuers comply with some basic security arrangements to help ensure the integrity of the ATM and EFTPOS networks. In addition, APCA stated that the proposed amendments provide guidance in other related areas, for example, the number of unsuccessful PIN attempts by a cardholder prior to disabling card access and the printing of expiry dates on debit cards.

Submissions lodged by interested parties

- 3.3 The Commission invited a range of interested parties to lodge submissions in respect of APCA's application. The Commission received a total of six submissions from interested parties. Of the submissions received, Cashcard Australia Limited (Cashcard) was the only party who had concerns with the proposed amendments to the CECS Manual. A summary of the submissions received by the Commission is given below.
- 3.4 The Bankcard Association of Australia (Bankcard) advised that it supported the changes to the CECS Manual. The Reserve Bank of Australia (RBA) advised that it did not object to the amendments proposed.
- 3.5 The Bank of Queensland Limited (Bank of QLD) advised that it supported the proposed changes to the CECS arrangements. The Bank of QLD stated that it

was of the view that the proposed amendments did not involve a material change in the effect of the authorisation previously granted. The Bank of QLD stated that it did not consider that the proposed amendments would reduce the extent to which the public benefit afforded by the authorisation outweighs any possible detriment to the public caused by the authorisation.

- 3.6 The Australia and New Zealand Banking Group Limited (ANZ) advised that it was aware of the contents of the proposed amendments to the CECS Manual and was also aware of the policy and other considerations which went into their drafting. ANZ stated in its submission that it accepts those policy determinations as being practical and appropriate for this clearing stream and believes that the proposed amendments are acceptable in their present form.
- 3.7 Coles Myer Ltd (Coles Myer) stated in its submission that it supports the proposed amendments to the CECS Manual. Coles Myer is of the view that the proposed amendments to the CECS Manual do not involve a material change in the effect of the authorisation. Coles Myer stated that it did not consider that the amendments will reduce the extent to which the benefit to the public from the authorisation outweighs any detriment to the public caused by the authorisation.
- 3.8 Cashcard Australia Limited (Cashcard) stated in its submission that it is generally supportive of the overall tenor of the variations proposed by APCA and its desire to provide clarity in respect of existing products.
- 3.9 Cashcard stated in its submission that it is concerned that there may be an unintended effect of disenfranchising certain emerging product types that do not meet some of the proposed standards. Cashcard stated that this relates especially to low value pre paid style debit cards that typically:
- by virtue of their being issued “on the spot”, do not carry any embossed particulars;
 - do not support refunds/reversals; and
 - are not valid in an off-line (“fall back”) situation.
- 3.10 Cashcard anticipates that demand for this type of product is likely to increase in the future and the variations, as they stand, could well inhibit their entry to the market and their ability to compete with “traditional” debit cards.
- 3.11 Cashcard stated in its submission that the fact that APCA’s standards in respect of embossing are logically and correctly designed to address capture of information on paper in a fall back situation, a possible resolution would be to exempt from such embossing requirements those cards that are intended by the issuer to be used only when on-line authorisation is available.

APCA's response to submissions made by interested parties

- 3.12 APCA made the following comments in relation to the submission lodged by Cashcard.
- 3.13 APCA stated that CECS is not intended and does not purport to apply to all cards currently in issue or contemplation. For example, any debit card which does not meet the proposed issuer standards may still be used by arrangement between particular institutions and merchants outside of CECS.
- 3.14 APCA stated that CECS standards do not apply to the electronic processing of credit card transactions and other card scheme transactions. These are governed by the rules and regulations published by various card schemes. APCA considers that the proposed issuer standards would not necessarily inhibit the use of the type of debit card mentioned by Cashcard in its submission.
- 3.15 APCA stated in its submission that based on their understanding of the operation of debit cards, the use of such cards would not give rise to interchange activities of a kind normally regulated by the CECS rules. APCA considers the use of such cards would not result in ATM or EFTPOS interchange activity (as defined in the CECS Regulations) with a resultant settlement obligation between an acquirer and issuer. Rather, APCA understands that the merchants concerned ordinarily would have pre-funded account arrangements with the financial institution concerned.

4. Commission's Assessment

- 4.1 In the Commission's determination dated 16 August 2000 granting authorisations A30176, A30177 and A90620 in respect of the CECS Regulations and Procedures, the Commission accepted the arrangements and conduct, which set minimum standards and procedures for participants in the ATM and EFTPOS networks, would be likely to result in benefit to the public by enhancing the security and integrity of the networks. The Commission was also of the view that the arrangements and conduct would be likely to assist entry to the networks by ensuring that prospective participants are not required by individual financial institutions to meet more stringent or unjustified standards and procedures.
- 4.2 The Commission understands that the CECS rules do not necessarily apply to the electronic processing of all debit card transactions. As stated by APCA in its submission a debit card which does not meet the proposed issuer standards may still be used by arrangement between particular institutions and merchants outside of CECS. As such the Commission is of the view that the proposed amendments will not necessarily prevent the take up of pre-paid cards that do not comply with the proposed standards.
- 4.3 The Commission is of the view that these amendments appear only to make incremental changes to the CECS Manual. The Commission considers that the proposed amendments to the CECS Manual will not impact on the net public

benefit identified by the Commission in its previous determination in any significant way. The variation may add to the integrity and security of the payments system.

5. Determination

- 5.1 The Commission is satisfied that the variation to authorisations A30176, A30177 and A90620 is minor as it does not involve a material change in the effect of the authorisations
- 5.2 The Commission is satisfied that the variation to authorisations A30176, A30177 and A90620 which is the subject of this application would not result, or would be likely not to result, in a reduction in:
- the extent to which the benefit to the public of the authorisations outweighs any detriment to the public caused by the authorisations, or
 - the benefit to the public that arose from the original authorisations.
- 5.3 The Commission therefore varies authorisations A30176, A30177 and A90620 to include the amendments to the CECS Manual that are the subject of this application. The authorisation shall remain in force until 7 September 2003, as provided for in the Commission's original determination dated 16 August 2000.
- 5.4 This determination is made on 8 May 2002. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 29 May 2002. If an application for review is made to the Tribunal, the determination will come into force:
- where the application is not withdrawn – on the day on which the Tribunal makes a determination on the review; or
 - where the application is withdrawn – on the day on which the application is withdrawn.